

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

D.A. NOLT, INC. AND SAFE, INC.¹

Employers

and

Case 4–RC–19819

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION 19, AFL–CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. D.A. Nolt, Inc. (“Nolt”) is a New Jersey corporation engaged in the roofing and sheet metal roofing business from its Berlin, New Jersey facility. David Nolt is its president and

¹ D.A. Nolt Inc.’s name appears as amended at the hearing.

sole owner and Steve Consalvo, its vice president. Safe, Inc. (“Safe”)² is a New Jersey corporation engaged in the business of providing construction services from its Medford, New Jersey facility. Safe primarily performs small roofing, landscaping and painting jobs. Sandra Nolt is the sole owner, officer and director of Safe. David and Sandra Nolt are husband and wife. The Petitioner contends that Nolt and Safe are a single employer and seeks a unit of all full-time and regular part-time sheet metal workers employed by the Employers excluding, inter alia, all roofers. The Employers assert that the record fails to establish that they are a single employer but they acknowledge that they were joint employers on a project involving the construction of a Strawbridge’s department store (“the Strawbridge’s job”) at a shopping mall in New Jersey where they employed sheet metal workers. They contend, however, that the subcontract on the Strawbridge’s job was cancelled and that they do not intend to hire sheet metal workers in the future, nor do they intend to bid on jobs that involve solely sheet metal work. The Employers contend that the instant petition should be dismissed as the petitioned-for unit no longer exists.³

In 1996, Sandra Nolt incorporated Safe, although the company did not begin obtaining work until March 1998. Nolt had been operating for some time prior to the incorporation of Safe. Nolt has two collective bargaining agreements with Roofers Local 30, the labor organization representing its roofers. There is no evidence in the record as to whether Safe has any agreements with any labor organization. Sandra Nolt created Safe while she was working “around” the Nolt office but was employed full-time elsewhere. David Nolt did not assist his wife in incorporating Safe. In 1997, Sandra Nolt began to work part time as an accountant for Nolt and remained on Nolt’s payroll until March 1998, when she began to obtain work for Safe. Safe has operated from the home that Sandra Nolt shares with her husband, from space in an industrial park that Sandra Nolt and her husband personally owned, and, since March 1999, from office space Safe leases from Nolt. Safe and Nolt share a controller. Sandra Nolt and David Nolt also cross-signed indemnity agreements and lines of credit for the other’s company. Sandra Nolt testified that she and her husband did so only because the issuers of the documents required the owner’s spouse to execute the agreements. Thus, she said, David Nolt signed the documents for Safe personally, as her spouse, and that she signed the papers for Nolt personally, as David Nolt’s spouse. They did not pledge the assets of each other’s companies to guarantee either of these documents. At one point, Safe loaned \$10,000 to David Nolt’s brother, which David Nolt eventually repaid from his personal funds.

Since March 1998, Safe has performed roofing jobs too small to be of interest to Nolt and “odds and ends,” including landscaping and painting. Nolt seeks commercial roofing work too large for Safe. Safe has also subcontracted roofing, landscaping and painting work from time to time to roofing companies, landscapers and individual painters unrelated to Safe or Nolt when Safe did not have the personnel to perform the work. There is no evidence that Nolt or David

² Nolt and Safe are collectively called the Employers.

³ The parties stipulated that the following employees would be eligible voters: Charles Smith, Bret Taylor, and William Younger. They were unable to agree as to the eligibility of Maurice Lacey. In view of decision to dismiss the petition, I need not decide the eligibility question. In any event, no testimony was taken on Maurice Lacey’s eligibility and he would have been voted subject to challenge.

Nolt played any role in obtaining, performing or subcontracting any work for or with Safe except on two occasions when Safe and Nolt subcontracted work to one another. The first occasion involved a job called the Richard Allen Homes project in Philadelphia, for which David Nolt helped Safe prepare the bid. Safe successfully obtained the subcontract from San Lucas Construction and Safe then subcontracted the work to Nolt. The second occasion occurred in June 1999. Nolt was working on the Strawbridge's job performing roofing work using its Roofers Local 30-represented employees. Because employees represented by the Petitioner who were performing ductwork on the same project for another company raised questions concerning certain sheet metal work being performed on the job, Nolt obtained an agreement from Safe to provide the labor for the remaining sheet metal work on Nolt's portion of the project. Nolt paid Safe for the subcontracting arrangement. Although Nolt's contract with the general contractor required Nolt to obtain its written consent in order to subcontract any of Nolt's work on the Strawbridge's job, Nolt did not notify or obtain the general contractor's consent before subcontracting the provision of labor to Safe. On August 4, 1999, four sheet metal workers were hired to work on Nolt's portion of the Strawbridge's job. The sheet metal workers used Nolt's equipment and were supervised by Nolt. Because of delays on the job, on October 15, 1999, Nolt terminated its subcontract with Safe, laid the sheet metal workers off and reassigned the sheet metal work to its own employees represented by Roofers Local 30. At the time of the hearing, the only portion of Nolt's work remaining on the Strawbridge's job was punch-list work.

Sandra Nolt testified that she has no intention of bidding on any sheet metal work, nor does she intend to provide labor to Nolt in the future. She also testified that she has no bids for, and does not intend to bid on, any roofing projects and plans to stick to landscaping and painting. David Nolt testified that he has bids for, and intends to continue to bid on, roofing work and that he intends to perform all of the work involved, including sheet metal work, with his Roofers Local 30-represented employees. He has no intention of bidding on jobs that involve only sheet metal work, nor does he intend to hire sheet metal workers. On a few occasions in the past, he has subcontracted the sheet metal component of a roofing job to sheet metal contractors where the scope of the sheet metal work was beyond the talents of his roofers. There is no evidence that he or Nolt Vice-President Steve Consalvo hired or supervised the employees of those subcontractors.

In determining whether one or more entities is a single employer, the Board examines whether there is an interrelation of operations, common management, centralized control over labor relations and common ownership. *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965); *Alexander Bistrizky*, 323 NLRB 524 (1997); *Silver Court Nursing Center*, 313 NLRB 1141, 1142 (1994); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), *enfd.* 626 F.2d 865, 106 LRRM 2869 (9th Cir. 1980). Not all of the criteria have to be present. *Denart Coal Co.*, 315 NLRB 850, 851 (1994), *enfd.* 71 F.3d 486 (4th Cir. 1995); *Silver Court*, *supra*, 313 NLRB at 1142. The Board will find that marriage is sufficient to find common ownership where there is evidence that one of the spouses has at least some involvement in the operation of the other's company. See *Denart Coal Co.*, *supra*, 315 NLRB at 851-852. David Nolt did not assist his wife in incorporating Safe and, while Sandra Nolt worked for Nolt after incorporating Safe, she ceased working for Nolt when Safe began to obtain work. Although Sandra and David Nolt cross-signed indemnity agreements and lines of credit for the other's

company, the evidence establishes that they did so because the issuers requires that spouses do so. They did not pledge the assets of either company to guarantee the documents issued to the other. When Safe lent money to David Nolt's brother, David Nolt repaid the loan. Sandra Nolt operated Safe from her home, from space owned by Sandra Nolt and her husband, and from until March 1999, space leased from Nolt. Safe and Nolt share a controller and had subcontracting relationships on two projects. While Safe does landscaping and painting, both companies do roofing work and have subcontracted at least two jobs to one another. Although the Employers concede they were joint employers of the sheet metal employees at the Strawbridge's job, regardless of the relationship between the companies, the unit the Petitioner seeks to represent no longer exists. Nolt terminated its subcontracting arrangement with Safe on the Strawbridge's job and neither company intends to hire sheet metal workers in the future. Although David Nolt intends to continue to seek roofing jobs that may involve incidental sheet metal work, he testified that he intends to use Nolt's Roofers Local 30-represented employees to perform the work. The Petitioner has no interest in representing Nolt's roofers. Accordingly, there is no question concerning representation at this time and I shall dismiss the Petition. *Davey McKee Corp.*, 308 NLRB 839, 840 (1992). Should the Employers resume hiring employees who would be employed in the unit sought by the Petitioner, I will entertain a motion to reinstate the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **January 21, 2000**.

Dated January 7, 2000

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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